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To:	Sales and Use Tax Subcommittee
From:	Roxanne Bland, MTC Counsel
Date:	July 15, 2010
Subject:	Telecommunications Transactional Tax Administration Project

At its March meeting, the subcommittee approved a policy checklist for the drafting group to use in crafting a model statute (Proposal II, State Administration/Local Imposition). These were:

1. State Level Registration §7(a)(1)
 - a. One-stop registration with state revenue agency for sales and other communications taxes administered solely within the state
 - b. Required election to register with local jurisdictions §7(b)(2)(D)(i)
2. State Level Administration §7(a)(8)
 - a. All state and local taxes
 - b. State-level filing of returns
3. Audit Procedures §7(a)(13), §7(b)(2)(D)(v)
One audit at state level for **each type** of tax
4. Uniform rules and procedures for refunds and credits §7(a)(19)

The Subcommittee directed the drafting group to develop model language for items 1 and 2, leaving items 3 and 4 as placeholders pending further development.

The drafting group met twice. In carrying out the Subcommittee's direction, the group believed it might be useful to add general provisions on the allocation and distribution of taxes collected and reimbursement of the costs of administration to give the draft greater context.

The drafting group presents the attached draft for the Subcommittee's consideration.

Telecommunications Transaction Tax Administration Project—Proposal II, Local Imposition, State Administration

**MTC Sales and Use Tax Subcommittee—7/15/10
For Discussion Purposes Only**

Scope of State-Level Administration of Local Transaction Taxes on Communications Services

The administrative requirements of this chapter shall apply to each type of local transaction tax on communications services within a local taxing jurisdiction. Nothing in this chapter shall be construed to require that the administrative requirements for one type of local transaction tax on communications services be identical to those applicable to any other type of local transaction tax on communications services.

Definitions

As used in this chapter, the following terms shall apply:

“Ancillary services” means services that are associated with or incidental to the provision of telecommunications services, including but not limited to detailed telecommunications billing, directory assistance, vertical service, and voice mail services.

“Communications services” includes telecommunications services, ancillary services, and video programming services.

“End user” includes any person other than a person who receives by contract a product “transferred electronically” for further commercial broadcast, rebroadcast, transmission, retransmission, licensing, relicensing, distribution, redistribution or exhibition of the product, in whole or in part, to another person or persons.

“Local taxing jurisdiction” means any municipality, city, county, township, parish, school district, transportation district, or assessment jurisdiction, or any other local jurisdiction in the territorial jurisdiction of the United States with the authority to impose a tax or fee, but does not include any of the several States, the District of Columbia, or any territory or possession of the United States.

“Local transaction tax on communications services” means any tax, charge, or fee levied by a local taxing jurisdiction as a fixed charge for each customer or measured by gross amounts charged to customers for communications services, regardless of whether such tax, charge, or fee is imposed on the seller or purchaser or the service and regardless of the terminology used to describe the tax, charge, or fee.

“Purchaser” means an end user of communications services or a person acquiring communications services on behalf of an end user.

“Seller” means the provider of communications services to an end user.

“State tax administrator” means a state’s tax commission, department of revenue, public utilities commission, or any other single entity designated by state law to perform the functions and duties set forth under this chapter for any type of local transaction tax imposed on communications services.

“Telecommunications services” means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. The term “telecommunications service” includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing without regard to whether such service is referred to as voice over Internet protocol services or is classified by the Federal Communications Commission as enhanced or value added. “Telecommunications service” does not include:

- A. Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where such purchaser's primary purpose for the underlying transaction is the processed data or information;
- B. Installation or maintenance of wiring or equipment on a customer's premises;
- C. Tangible personal property;
- D. Advertising, including but not limited to directory advertising.
- E. Billing and collection services provided to third parties;
- F. Internet access service;
- G. Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance and routing of such services by the programming service provider.
- H. Ancillary services; or
- I. Digital products delivered electronically, including but not limited to software, music, video, reading materials or ring tones.

“Video programming services” includes cable service as defined in 47 U.S.C. § 522(6); interactive on-demand service as defined in 47 U.S.C. § 522(12); the provision of video programming by a multichannel video programming distributor as defined in 47 U.S.C. §§ 522(20) and (13); and the provision of video programming by providers of commercial mobile radio service as defined in section 20.3 of title 47, Code of Federal Regulations, when such services are offered for purchase by subscribers or customers of such service.

Preservation of Local Authority; Cooperation Among Jurisdictions

- A. This chapter does not supersede, impair, or grant the right, if any, of a local taxing jurisdiction to impose a local transaction tax on a communications service or exempt any

communications service from tax, or require the payment of consideration or to require the payment of regulatory fees or assessments by persons using or occupying its roads or rights-of-way in a capacity other than that of a seller or purchaser of communications services.

B. The state tax administrator may request from any state agency or local taxing jurisdiction any information that the state tax administrator considers necessary in administering this chapter, and such agency or jurisdiction shall furnish such information.

State Level Administration

A. The state tax administrator shall administer and collect all local transaction taxes imposed by every local taxing jurisdiction within this state. As applicable, sellers or purchasers of communications services that are subject to any type of local transaction tax on communications services are only required to register with, file returns with, and remit amounts to the state tax administrator, except to the extent that any provision of this chapter is either inconsistent with or not relevant to a provision of the [local enabling law]. The state tax administrator shall conduct, or authorize others to conduct on its behalf, audits of such sellers and purchasers for the local transaction tax on communications services. Local taxing jurisdictions shall not conduct audits of sellers or purchasers for local transaction taxes on communications services, except as otherwise provided in this chapter.

B. If permitted by state law, the state tax administrator may authorize audits of communications service providers to be conducted or performed by others on behalf of the state tax administrator so long as: (1) the person is conducting the audit for all local taxing jurisdictions within the state; (2) the person is subject to the same confidentiality provisions (and other protections afforded a taxpayer) as a person working for the state tax administrator; (3) the audit does not cover an audit period already conducted by the state tax administrator or other person acting on its behalf, absent fraud or mutual consent; and (4) the audit is subject to the same administrative and appeal procedures granted to audits conducted by the state tax administrator.

C. Audits performed by the state tax administrator may include a determination of the seller's or purchaser's compliance with the jurisdictional siting of the end user's service addresses and a determination of whether the rate collected for the local transaction tax on communications services is correct. However, notwithstanding any other provision of law to the contrary, if the state tax administrator determines that a seller or purchaser of communications services sells or purchases communications services within a single local taxing jurisdiction in this state, that local taxing jurisdiction may perform an audit of such person with respect to the communications services sells or purchases within the local taxing jurisdiction.

Registration

Each person seeking to engage in business as a communications services provider must file with the state tax administrator an application for a certificate of registration. Registration with the state tax administrator under this section constitutes registration with every local taxing jurisdiction in this state that imposes a local transaction tax on communication services; provided that a communications services provider may elect to separately register with any local taxing jurisdiction in this state that imposes such taxes.

Returns

A. For each type of local transaction tax on communications services imposed by any local taxing jurisdiction within this state, every seller or purchaser of communications services maintaining a place of business in this state shall, on or before [calendar period], make a return to the state tax administrator, stating:

- (i) Its name.
- (ii) The address of its principal place of business or the address of the principal place of business (if a different address) from which it engages in the business of providing communications services.
- (iii) The total amount of gross charges billed by it during the [calendar period] for providing communications services and upon the basis of which the tax is imposed.

B. The state tax administrator shall:

- (i) Require that only a single tax return for each taxing period for each seller or purchaser of communications services be filed for each type of local transaction tax on communications services to include all the taxing jurisdictions within the state.
- (ii) Require that such returns be due no sooner than the twentieth day of the month following the month in which the transaction occurred.
- (iii) Make available to all sellers and purchasers of communications services a simplified return that is filed electronically.

C. Each seller or purchaser of communications services obligated to collect and/or remit one of the local transaction tax on communications services imposed by a local taxing jurisdiction chapter shall separately report and identify each such tax to the state tax administrator, by jurisdiction, on a form prescribed by the state tax administrator, and shall pay or remit such taxes to the state tax administrator.

Allocation and Distribution of Tax

A. The state tax administrator shall provide for the collection of local transaction taxes on communications services and the distribution of such amounts to each appropriate local taxing jurisdiction.

B. Notwithstanding any law to the contrary, the proceeds of all local transaction taxes on communications services levied by each local taxing jurisdiction collected and designated for distribution to local taxing jurisdictions shall be transferred to the Local Transaction Tax Trust Fund and held there to be distributed to such local taxing jurisdiction. The state tax administrator may promulgate rules for the reasonable allocation of local transaction taxes on communications services levied by each local taxing jurisdiction collected and designated for distribution to local taxing jurisdictions. Such local transaction taxes shall not be withheld or reduced by the [state legislature] for any reason, except for adjustments to reimburse the state tax administrator for the costs of administering this chapter.

C. For purposes of this [section], the Local Transaction Tax Trust Fund shall be created and maintained by the state tax administrator. The state tax administrator may promulgate rules for the maintenance of the Local Transaction Tax Trust Fund consistent with state law.

Reimbursement of Administrative Costs

The state tax administrator shall charge the local taxing jurisdiction for its services in an amount sufficient to reimburse the state tax administrator for the cost to the state tax administrator for rendering its services; provided that the amount charged to local taxing jurisdiction for such services shall not exceed [one percent] of the tax collected. The cost of administration shall be prorated among the local taxing jurisdictions levying a local transaction tax on communications services on the basis of the amount collected for a particular local taxing jurisdiction to the total amount collected for all such jurisdictions.

Authority of State Tax Administrator to Promulgate Rules

A. The state tax administrator may promulgate rules to administer and enforce the assessment and collection of the taxes, interest, and penalties collected under or imposed by a local taxing jurisdiction.

B. The provisions of [the state's sales tax laws] shall, as far as lawful and practicable, be applicable to the local taxes on communications services imposed by a local taxing jurisdiction and administered under this chapter and to the collection thereof as if fully set out in this chapter. No provision of [the state's sales tax laws] shall apply if it conflicts with any provision of this chapter.

C. To administer each type of local transaction tax on communications services, the state tax administrator may adopt rules relating to:

(i) The filing of returns and remittance of tax, including provisions concerning electronic funds transfer and electronic data interchange subject to reasonable exceptions determined by the state tax administrator.

(ii) The determination of customer service addresses, consistent with federal and state law.

(iii) The interpretation or definition of any exemptions or exclusions from taxation granted by law.

(iv) The records and methods necessary for a seller and purchaser of communications services to demonstrate the exercise of due diligence.

(v) The registration of sellers and purchasers of communications services.

(vi) The types of books and records kept in the regular course of business which must be available during an audit of a seller's or purchaser's books and records and examples of methods for determining the reasonableness thereof. Books and records kept in the regular course of business include, but are not limited to, general ledgers, price lists, cost records, customer billings, billing system reports, tariffs, and other regulatory filings and rules of regulatory authorities. Such records may be required to be made available to the state tax administrator in an electronic format when so kept by the seller or purchaser. The seller or purchaser may support any allocation of charges with books and records kept in the regular course of business covering the seller's or purchaser's entire service area, including territories outside this state. During an audit, the state tax administrator may reasonably require production of any additional books and records found necessary to assist in its determination.

(vii) The procedure for claiming a refund or credit of local transaction tax imposed on communications service by the local taxing jurisdiction.